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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Evaristo Jonathan Garcia,

Petitioner,

V.

W.A.. Gittere, et al.,¹

Respondents.

Case No. 2:17-cv-03095-JCM-CWH

**Unopposed Petitioner's Motion for
Extension of Time to File Response
to ECF 67**

(First Request)

¹ Evaristo Garcia is confined at High Desert State Prison and Jeremy Bean is the current warden. Evaristo's *pro se* petition previously named the Nevada Department of Corrections. Evaristo requests Jeremy Bean be substituted in as the respondent. See Rules Governing § 2254 Petitions, Rule 2(a) (requiring a prisoner-petitioner name the "state officer having custody" as the respondent.). See also *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994) (*per curiam*) (typical the state officer who has custody is "the warden of the facility in which the petitioner is incarcerated."). This Court may order substitution of a party at any time under Rule 25 and Rule 15 permits amendments to pleadings. Fed. R. Civ. P. 25(d), 15(a)(2).

POINTS AND AUTHORITIES

Petitioner Evaristo Garcia respectfully asks this Court to enter an Order extending his deadline by 30 days until January 2, 2025, to inform this Court on how he wishes to proceed following this Court's order finding part of one claim unexhausted.²

This is Garcia's first request to extend this deadline. This request for an extension is made in good faith and not solely for the purpose of delay. There is good cause for the requested extension of time.

On October 30, 2024, this Court entered an Order denying in part and granting in part Respondents' Motion to Dismiss.³ In that Order, this Court allowed Garcia thirty days to "(1) inform this court in a sworn declaration that he wishes to formally and forever abandon the unexhausted grounds for relief in his federal habeas petition and proceed on the exhausted grounds; OR (2) inform this court in a sworn declaration that he wishes to dismiss this petition without prejudice in order to return to state court to exhaust his unexhausted grounds; OR (3) file a motion for a stay and abeyance, asking this court to hold his exhausted grounds in abeyance while he returns to state court to exhaust his unexhausted grounds."⁴

Undersigned spoke with Garcia, who indicated his desire to elect option 1. Counsel mailed Garcia a declaration to that effect on November 12, 2024.

The current deadline for Garcia's response is Monday, December 2, 2024. Counsel intends to file the declaration upon receipt. Because of delays in mail processing at correctional facilities and the holiday, Garcia seeks this additional time

2 ECF No. 67.

³ ECF No. 67.

⁴ ECF No. 67, 11:7-13.

1 to file his declaration.

2 On November 25, 2024, counsel exchanged emails with Heather Procter,
3 counsel for the respondents, who reported that she does not object to this request.

4 Accordingly, Garcia respectfully asks this Court to grant this request and
5 extend his deadline for filing his response by 30 days until January 2, 2025.

6 Dated: November 26, 2024.

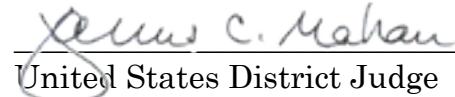
7 Respectfully submitted,

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9 Rene L. Valladares
10 Federal Public Defender

11 /s/ Andréa L. Vieira

12 Andréa L. Vieira
13 Assistant Federal Public Defender

14 IT IS SO ORDERED:

15
16 
17 United States District Judge

18 Dated: December 2, 2024